IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3952 OF 2005

M/s.IMP Power Limited : Petitioner
(Orig. Plaintiff)

V/s.

Karnataka Bank Ltd. & Anr. : Respondents
(Orig. Defendants)

...

Mr.S.S.Patwardhan for the petitioner.

Mr.Milind Vasudeo i/b. B.K. Desai & Co., for the respondent no.2.

...

WITH

WRIT PETITION NO.3953 OF 2005

M/s.IMP Power Limited : Petitioner
(Orig. Plaintiff)

V/s.

Karnataka Bank Ltd. & Anr. : Respondents
(Orig. Defendants)

...

Mr.S.S.Patwardhan for the petitioner.

Mr.Shailesh Shah i/b. B.K. Desai & Co., for the respondent no.2.

...

CORAM : S.A. BOBDE, J.

July 13, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondent no.2 waives service of rule.

Heard by consent.

2. The petitioner has challenged the order dated 4.5.2005 passed by the City Civil Court, Mumbai. This order is passed in Notices of Motion taken out by the respondent no.2. Since the order is common and the issue involved is identical, it would be convenient to dispose of both these petitions by this common order.

3. The respondent no.2-defendant no.2 have taken out Notices of Motion, inter alia, praying for dismissal of the suit for want of pecuniary jurisdiction of the City Civil Court. Admittedly, the limit of pecuniary jurisdiction of the City Civil Court is Rs.50,000/-.

4. The learned City Civil Court, after hearing the matter, rejected the petitioner’s contention that the suits are not entitled to be valued in terms of money and

that the suits are for injunction alone. The learned Judge held that the plaintiff must value the loss sought to be avoided by them under item 7 of Schedule 1 of the Bombay Court Fees Act, 1959 as held in the case of Mohan Meakin Brewerles Ltd. v. Oceanic Imports and Exports Corporation, reported in 1980 Mh.L.J. 803. The Court, therefore, adjourned the suits to 13.6.2005 for revaluation/rejection of the plaint, if not correctly valued. There is no specific order of the Court rejecting the plaint. Indeed, if there was such an order, the petitioner would have been bound to prefer an appeal under Order 43 Rule 1A of the C.P.C. The Court, however, kept the matter for revaluation on 13.6.2005.

5. Mr.Vasudeo and Mr.Shah, learned counsel for the respondent no.2 in both the petitions, submitted that there is a clear finding by the Court that the suit is beyond the pecuniary jurisdiction of the Court. However, the learned counsel relied on paras 2, 3 and 4 of the operative part of the impugned order. There is no express finding. In paras 2 and 3, the defendants' contention is reproduced. In para 4, it is held that the plaintiff must value the loss sought to be avoided by them under item 7 of Schedule 1. This is not, however, followed by an order that the suit is beyond the pecuniary jurisdiction of the

Court and, therefore, the plaint is rejected. On the other hand, the Court, vide item 7 of the operative part of the order has directed as follows:-

> "Both the suits are adjourned to 13.6.2005 for revaluation/for rejection of plaint if not correctly valued."

6. Admittedly, on 13.6.2005, the Court did not take up the matter for revaluation since it was busy in other matters. In the circumstances, I do not consider it appropriate at this stage to interfere with the impugned order since the matter is still at large. The City Civil Court shall proceed to make a specific order regarding revaluation as contemplated by the order. Thereupon, it shall specifically hold whether the suits are within or beyond its pecuniary jurisdiction and shall do so explicitly on the next date and make an appropriate order under Order VII Rule 11.

7. In the circumstances, there is no reason to interfere. The rule is disposed of with the aforesaid observations.

Sd/-

S.A. BOBDE, J.